

STATE OF MAINE  
125<sup>th</sup> LEGISLATURE  
FIRST REGULAR SESSION

**Final Report  
of the  
Commission on Reform of the Governance of Land Use Planning  
in the Unorganized Territory**

Presented to the  
Joint Standing Committee on Agriculture, Conservation and Forestry

December, 2011

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## **Executive Summary**

The Commission on Reform of the Governance of Land Use Planning in the Unorganized Territory (the commission) was established by Resolve 2011, chapter 113 to advise the Joint Standing Committee on Agriculture, Conservation and Forestry on matters relating to land use planning and regulation in the unorganized territory of Maine. A copy of the Resolve is included as Appendix A.

The commission was formed during the fall of 2011, with the appointment of thirteen (13) members by the Governor, President of the Senate and Speaker of the House. A copy of the commission's membership is included as Appendix B. The commission held six public meetings: in Bangor on September 22; in Solon on October 6; in Ashland on October 22; in Calais on November 3; in Greenville on November 17; and in Bangor on December 1, 2011. During these meetings, the commission received input from concerned citizens and other stakeholder groups and reached consensus in several areas, formulating unanimous recommendations for the future of land use planning, zoning, permitting and appeals in the unorganized territory of Maine.

Selected recommendations from the commission include:

- A revised purpose and scope statement that values both preservation and protection of natural resources as well as support for economic vitality in the unorganized territory;
- The retention of a statewide land use planning, zoning and permitting board for the unorganized territory, with significant representation on the board selected by county governments to assure local/regional input;
- The shift of major site development applications in the unorganized territory to the Maine Department of Environmental Protection;
- The shift of forest management activities in the unorganized territory to the Maine Forest Service;
- The shift of staff geographically closer to the unorganized territory;
- A process to encourage counties to engage in regional land use planning with assistance from planning and economic development organizations within the statewide structure, with the option of an "opt-out" provision which would enable a county after three years to develop plans and zones for its unorganized territory pursuant to the state Growth Management Act and subsequent county oversight of relevant planning, zoning, permitting and appeals.

## Introduction

The Maine Land Use Regulation Commission (LURC) is charged with extending sound principles of planning and zoning throughout its jurisdiction—more than 10.4 million acres of unorganized territory across the State of Maine. Defined as all unorganized and deorganized townships as well as all plantations and those municipalities that have organized since 1971 and have not been approved by LURC to implement their own land use controls, the unorganized territory is the least populous and least developed portion of Maine. It encompasses the largest block of undeveloped forestland in the Eastern United States and remains predominantly in private ownership, though it contains many public values and resources.

In response to the fact that there was no land use planning or zoning in the unorganized territory, the Maine Legislature originally passed LURC's organic act, 12 M.R.S. §681 *et. seq.*, in 1969. As amended in 1971, it established a seven member commission to essentially serve as a local planning and zoning board for the unorganized territory. Though amended many times since, the purpose and scope of this enabling legislation has remained focused on the preservation and protection of natural resources and values and the prevention of inappropriate development and substandard structures. LURC and its staff have focused on this conservation-oriented mission for forty (40) years.

While successful in its mission, substantive concerns have been raised over the years relating to: private property rights in the unorganized territory; LURC decision-making activities far from the unorganized territory and inattentive to local interests; and a general lack of consideration for economic viability in the unorganized territory. In 2011 several legislative bills were submitted that would reform and/or replace LURC and its enabling statute with the intent of addressing such concerns. None of the bills were enacted but Resolve 2011, chapter 113, originating from LD 1534, Resolve, To Reform the Land Use and Planning Authority in the Unorganized Territory, was passed. It established the commission to consider issues and to make recommendations on how the present statutes might be reaffirmed, reformed or replaced. This report is the outcome of the commission's meetings and deliberations.

The commission consisted of thirteen (13) members representing the following interests and constituencies:

- The Commissioner of Conservation;
- Two residents of the unorganized territory;
- One representative of a large landowner in the unorganized territory engaged in the forest products industry;
- One representative of a small landowner in the unorganized territory engaged in the forest products industry;

- Two county commissioners from counties with significant acreage in the unorganized territory;
- One representative of a statewide sportsmen's organization;
- One representative of a statewide environmental or conservation organization;
- One representative of a regional environmental or conservation organization;
- One representative of the tourism or outdoor recreation industry in the unorganized territory;
- One representative of a regional or local economic development organization serving an area that includes unorganized territory; and
- One regional planner from a council of governments in a county with significant acreage in the unorganized territory.

Resolve 2011, chapter 113 spelled out specific duties for the commission to guide it through the reform process. These duties included to:

- Consider reforming the governance of land use planning in the unorganized territory and make recommendations on the role of state agencies and county government, the planning and appeals process and opportunities for increased self-determination in land use planning in the unorganized territory;
- Ensure that any recommendation that entails the elimination of LURC provides an effective transition process, including a plan for LURC to complete any pending work or transfer the work to relevant agencies;
- Ensure uniform standards across the unorganized territory for timber harvesting activities and forest management, wildlife habitat protection and issues under the jurisdiction of the Natural Resources Protection Act; and
- Consider options for reforming the governance of land use planning in the unorganized territory.

Department of Conservation staff members provided support to the commission throughout the review process.

## **Review Process**

The commission held six day-long public meetings: in Bangor on September 22; in Solon on October 6; in Ashland on October 22; in Calais on November 3; in Greenville on November 17; and in Bangor on December 1, 2011. All but the last of these meetings included public listening sessions for concerned citizens to voice their opinions of and experiences with LURC as well as their recommendations for the future of land use planning, zoning, permitting and appeals in the unorganized territory. Over 200 members of the public attended the meetings and over seventy (70) chose to speak during the listening sessions.

During the September 22 meeting, the commission discussed and came to a unanimous consensus on several statements to guide subsequent discussions. The commission agreed:

- That its vision is to honor Maine's natural resource economy;
- That sound planning, permitting, zoning and appeals will persist;
- To maintain strong environmental protections;
- To encourage and facilitate regional economic viability;
- That residents and property owners in the unorganized territory will have significant input and impact (have a say in their own destiny);
- To ensure uniform standards across all regions for forest management, wildlife, agriculture and water quality;
- To provide excellent customer service and communications; and
- To recognize private ownership/public values (broad state interest/uniqueness of the unorganized territory) and public costs;
- That what the commission develops will stand the test of time.

The commission also invited several speakers with varying perspectives to share thoughts and offer suggestions from various stakeholder groups. Presentations were made by the following persons:

- Elizabeth Swain, President, Barton & Ginghold, past LURC Chair;
- Jennifer Gray, Staff Attorney, Maine Audubon;
- Gwen Hilton, Chair, LURC;

- Samantha Horn-Olsen, Division Manager, Planning, LURC;
- Roderick Falla, Acting Division Manager, Permitting and Compliance, LURC;
- Paul Underwood, Commissioner, Aroostook County;
- Edmund Bearor, Partner, Law Offices of Rudman & Winchell; and
- Patrick Strauch, Executive Director, Maine Forest Products Council.

The commission provided the Joint Standing Committee on Agriculture, Conservation and Forestry with an update of its progress on October 27, 2011.

A website ([www.maine.gov/doc/lurcreformcommission](http://www.maine.gov/doc/lurcreformcommission)) was also established to provide interested parties access to meeting agendas, minutes, handouts, written public comments and background information.

## **Findings and Recommendations**

The commission strongly urges that these unanimous recommendations be taken as a comprehensive package and not implemented piecemeal. It is the commission's firm belief that, taken as a whole, this consensus will benefit Maine and the unorganized territory.

### **1. Structure and Scope**

The commission recommends:

- a. Retaining a jurisdiction-wide land use board operating under a new name.
- b. That the board hold its meetings in the unorganized territory or as close to it as possible.
- c. That the staff of the board be located as close to the jurisdiction as is feasibly possible.
- d. That a revised purpose and scope statement be adopted and incorporated as 12 M.R.S. § 681 as follows:

#### **12 M.R.S. § 681. Purpose and Scope**

The Legislature finds that it is desirable to extend the principles of sound planning, zoning and development to the unorganized and deorganized townships of the State: to preserve public health, safety and general welfare; to support and encourage Maine's natural resource based economy and strong environmental protections; to encourage appropriate residential, recreational, commercial and industrial uses; to honor the rights and participation of residents and property owners in the unorganized territory while recognizing the unique value of these lands and waters to the State; to prevent residential, recreational, commercial and industrial uses detrimental to the long term health, use and value of these areas and to Maine's natural resource based economy; to discourage the intermixing of incompatible industrial, commercial, residential and recreational activities; to prevent the development in these areas of substandard structures or structures located unduly proximate to waters or roads; to prevent the despoliation, pollution and detrimental uses of the water in these areas; and to conserve ecological and natural values.

The Legislature declares it to be in the public interest, for the public benefit, for the good order of the people of this State and for the benefit of the property owners and residents of the unorganized and deorganized townships of the State, to encourage the well-planned and

well-managed multiple use, including conservation, of land and resources, and to encourage and facilitate regional economic viability. The Legislature acknowledges the importance of these areas in the continued vitality of the State and to local economies. Finally, the Legislature desires to encourage the appropriate use of these lands by the residents of Maine and visitors, in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping.

## 2. Membership

The commission recommends:

- a. That the membership of the board be increased from seven (7) to nine (9) members including: one (1) county commissioner or a designee from each of the six (6) counties with the largest acreage of unorganized territory, appointed by the county commissioners of each respective county; and three (3) at-large members appointed by the Governor and subject to the approval of the Legislature.

## 3. Staff and Training

The commission recommends:

- a. That staff of the board receive regular training to address customer service and other needs.
- b. That staff of the board develop and implement policy guidance memos to improve the predictability, consistency and fairness of rules and standards and make these memos readily available to the public.
- c. That staff of the board review and revise the Chapter 10 rules to improve the definitions and standards pertaining to permit-by-rule opportunities, nonconforming uses, and Concept Plans, etc. with the goal of making them and the rezoning and permitting processes more user-friendly and consistent.
- d. That the board members receive training including orientation and continuing education on Title 12, the Chapter 10 rules and standards, and regulatory processes.
- e. That the board explore the potential to cross train Department of Conservation field staff and county personnel to handle small permitting functions (see section 5(a)).

#### 4. Planning and Zoning

The commission recommends:

- a. That counties be allowed and encouraged, separately or in partnership, to petition the board to initiate a committee process for developing and implementing a regional comprehensive land use plan and zoning for all or a part of their jurisdiction. Each regional planning and zoning committee should:
  - i. Draw on expertise and input from representatives from the Regional Economic Development Commission, Regional Planning Commission, the public, landowners in the unorganized territory, and residents of the unorganized territory; and
  - ii. Incorporate representatives of the service center communities (and any neighboring communities that wish to be included) with the goal of developing one plan that serves economic development planning in both the service center and the adjacent unincorporated townships.
- b. That a process be provided for a county to seek exclusion three (3) years after the effective date of any legislation to implement these recommendations and to take on full responsibility for land use planning and regulation within the unorganized territory of the county, provided the county has:
  - i. Adopted a county charter;
  - ii. A Title 30-A-compliant comprehensive land use plan (CLUP) approved by the State Planning Office or its successor using requirements set out in the Growth Management Act;
  - iii. Hired the necessary planning, permitting and code enforcement staff; and
  - iv. Created a planning board, zoning ordinances, and a board of appeals.
- c. That the “demonstrated need” criterion be eliminated from 12 M.R.S. § 685-A(8-A)(B).
- d. That the jurisdiction-wide CLUP be approved in the future by an up or down vote of the Legislature, after review by the legislative committee of jurisdiction (akin to the adoption of a CLUP by town meeting or city council vote). If approved, the CLUP shall go into effect. If rejected, it

shall be revised by the board to address concerns raised and resubmitted to the Legislature for final approval.

5. Permitting and Regulation

The commission recommends:

- a. That counties, or groups of counties, have an opportunity to request approval for delegation of small permitting functions (similar to how the Maine Department of Environmental Protection (MDEP) is authorized to implement some federal environmental laws) such as:
  - i. Building permits;
  - ii. Accessory structures;
  - iii. Additions/renovations; and
  - iv. Shoreland alterations.
- b. That all existing permits and Concept Plans remain in full force and effect, and finally administered by the board.
- c. That the board expand permit-by-rule opportunities to include: accessory structures to commercial projects; docking structures; and shoreland alterations.
- d. The transfer of regulation and enforcement of forest management activities in the unorganized territory to the Maine Forest Service.
- e. The transfer of all permitting for wind power projects and other large projects that trigger the Site Location of Development Act in the unorganized territory, except under existing or future Concept Plans, to the MDEP.
- f. That an optional workshop process be instituted to preview large projects with board members, providing an informal setting to discuss issues and receive input before any formal process begins.
- g. That enforcement duties be handled statewide by staff of the board or delegated to counties who have demonstrated capacity for the permitting functions in subsection (a).

## 6. Appeals

The commission recommends:

- a. That meetings and public hearings related to an appeal of a staff or board decision be held at a location as close as possible to the project(s) under consideration for appeal, recognizing that multiple appeals from widely dispersed geographic areas may not all be accommodated close to the project location.

## 7. Performance Goals and Oversight

The commission recommends:

- a. That the board be required to report to the legislative committee of jurisdiction by January 15 of each year on the following:
  - i. The number of permits processed for the previous year, by category;
  - ii. The average time of pre-application consultation;
  - iii. The average time for reaching a decision (approval/denial);
  - iv. The goals for the improvement in processing times for the year ahead;
  - v. The status of regional planning and zoning initiatives, with goals for the year ahead; and
  - vi. A description of staff and board training initiatives to ensure increased customer service and consistency in application of board rules and regulations, with goals for the year ahead.
- b. That the legislative committee of jurisdiction hold a public hearing annually for the presentation of the annual performance and goals reports, to be presented by the Chair and other members of the board, with an opportunity for public comment.

## 8. Statewide Values

The commission finds:

- a. That all the people of Maine and the landowners of the unorganized territory value it for the vastness of its forests, its exceptional water and wildlife resources, its residents and their quality of life, and for the

recognition of traditional access balanced with the rights of private property.

9. Issues Needing Further Discussion and Resolution

The commission recommends:

- a. That the board undertake a comprehensive review of the 2010 CLUP in order to bring it in line with the revised purpose and scope statement.
- b. That the board address the so-called “adjacency” criterion needed to rezone land in the unorganized territory pursuant to 12 M.R.S. § 685-A(8-A)(A).
- c. That the board address subjective terminology in the criteria for rezoning and development approval, including but not limited to:
  - i. The “no undue adverse impact” language in 12 M.R.S. § 685-A(8-A)(B).
  - ii. The “harmonious fit” provision and the “no undue adverse effect” language in 12 M.R.S. § 685-B(4)(C).
- d. That the financing and budgeting for the board be reviewed to reflect any shift in planning, zoning, permitting or appeals that occur as a result of these recommendations.
- e. That the board review the current prohibition on ex parte communications and determine if there are opportunities for increased interaction between applicants, landowners and the board on specific projects or in developing the comprehensive land use plan.

## **Appendix A**

### Authorizing Legislation

Chapter 113

H.P. 1126 – L.D. 1534

**Resolve, To Reform the Land Use and Planning Authority in the Unorganized Territory**

**Sec. 1 Commission on Reform of the Governance of Land Use Planning in the Unorganized Territory established. Resolved:** That the Commission on Reform of the Governance of Land Use Planning in the Unorganized Territory, referred to in this resolve as "the commission," is established to advise the Joint Standing Committee on Agriculture, Conservation and Forestry on matters relating to land use planning and regulation in the unorganized territory; and be it further

**Sec. 2 Membership. Resolved:** That the commission consists of 13 members, as follows:

1. The Commissioner of Conservation or the commissioner's designee;
2. Two residents of the unorganized territory, one appointed by the President of the Senate and one appointed by the Speaker of the House;
3. One representative of a large landowner in the unorganized territory engaged in the forest products industry, appointed by the Governor;
4. One representative of a small landowner in the unorganized territory engaged in the forest products industry, appointed by the Governor;
5. Two county commissioners from counties with significant acreage in the unorganized territory, one appointed by the President of the Senate, and one appointed by the Speaker of the House;
6. One representative of a statewide sportsmen's organization, appointed by the Governor;
7. One representative of a statewide environmental or conservation organization, appointed by the President of the Senate;
8. One representative of a regional environmental or conservation organization, appointed by the Speaker of the House;
9. One representative of the tourism or outdoor recreation industry in the unorganized territory, appointed by the Governor;
10. One representative of a regional or local economic development organization serving an area that includes unorganized territory, appointed by the President of the Senate; and
11. One regional planner from a council of governments in a county with significant acreage in the unorganized territory, appointed by the Speaker of the House; and be it further

**Sec. 3 Chair. Resolved:** That, after all members of the commission have been named, the Governor shall designate one member to serve as chair and another member

to serve as vice-chair; and be it further

**Sec. 4 Duties. Resolved:** That the commission shall:

1. Consider reforming the governance of land use planning in the unorganized territory and make recommendations on the role of state agencies and county government, the planning and appeals process and opportunities for increased self-determination in land use planning in the unorganized territory;

2. Ensure that any recommendation that entails the elimination of the Maine Land Use Regulation Commission, referred to in this resolve as "LURC," provides an effective transition process, including a plan for LURC to complete any pending work or transfer the work to relevant agencies;

3. Ensure uniform standards across the unorganized territory for timber harvesting activities and forest management, wildlife habitat protection and issues under the jurisdiction of the Natural Resources Protection Act; and

4. Consider options for reforming the governance of land use planning in the unorganized territory; and be it further

**Sec. 5 Meetings; interim update. Resolved:** That the commission shall meet as necessary to complete the assigned duties. The commission shall hold no fewer than 2 public listening sessions on dates determined by the commission. The commission shall meet with the Joint Standing Committee on Agriculture, Conservation and Forestry no later than October 28, 2011 for an update on the progress of the commission; and be it further

**Sec. 6 Staffing. Resolved:** That the Department of Conservation shall provide staff support to the commission within existing resources. The Commissioner of Conservation shall invite resource people to assist as appropriate, including individuals with past experience as LURC commissioners and staff; and be it further

**Sec. 7 Compensation. Resolved:** That members of the commission do not receive compensation for their time, travel or other expenses; and be it further

**Sec. 8 Report. Resolved:** That the commission shall complete its work no later than December 15, 2011 and submit its report and recommendations to the Joint Standing Committee on Agriculture, Conservation and Forestry no later than January 4, 2012; and be it further

**Sec. 9 Authority to submit legislation. Resolved:** That the Joint Standing Committee on Agriculture, Conservation and Forestry shall submit legislation reforming the governance of land use planning in the unorganized territory to the Second Regular Session of the 125th Legislature to take effect in fiscal year 2012-13.

## **Appendix B**

### Commission Membership

**Commission on Reform of the Governance of Land Use Planning  
in the Unorganized Territory**

**Resolve 2011, chapter 113**

**Membership**

Appointed by the Governor:

1. Don Kleiner, as a representative of a statewide sportsmen's organization.
2. Sarah Medina, Vice-Chair, as a representative of the tourism or outdoor recreation industry in the unorganized territory.
3. Hank McPherson, as a representative of a small landowner in the unorganized territory engaged in the forest products industry.
4. Don White, as a representative of a large landowner in the unorganized territory engaged in the forest products industry.

Appointed by the President of the Senate:

5. Elbridge Cleaves, as a representative of a regional environmental or conservation organization.
6. Chris Gardner, as a county commissioner from a county with significant acreage in the unorganized territory.
7. Durward Humphrey, as a resident of the unorganized territory.
8. Gary Lamb, as a representative of a regional or local economic development organization serving an area that includes unorganized territory.
9. Tom Rumpf, as a representative of a statewide environmental or conservation organization.

Appointed by the Speaker of the House:

10. Judith East, as a regional planner from a council of governments in a county with significant acreage in the unorganized territory.
11. Duane Lander, as a resident of the unorganized territory.
12. Lynda Quinn, as a county commissioner from a county with significant acreage in the unorganized territory.

Ex Officio:

13. Bill Beardsley, Chair, as Commissioner of Conservation.